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February 11, 2003

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Re: *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*; WC Docket Nos. 01-338, 98-147, 96-98

Dear Ms. Dortch:

On February 10, 2003, Charles E. Hoffman, President and Chief Executive Officer, Brad Sonnenberg, General Counsel, Jason Oxman, Assistant General Counsel, and Praveen Goyal, Senior Counsel, all of Covad Communications Company (Covad), made an *ex parte* presentation via telephone in the above-referenced docket to Commissioner Kevin Martin and Daniel Gonzalez. Consistent with Commission Rule 1.1204, Covad provided the information discussed in its presentation pursuant to a request from Commissioner Martin, as conveyed by Mr. Gonzalez. Pursuant to Commission Rules 1.1204 and 1.1206(b), Covad herewith provides a written summary of its oral presentation.

In response to a question from Commissioner Martin, Covad made clear its support for all forms of local competition, including the so-called UNE Platform (UNE-P), and that Covad supports the efforts of UNE-P carriers to preserve their access to that form of market entry. Although Covad does not have any specific proposal for UNE-P resolution, Covad stated its view that the issue of UNE-P, and the proper role of the state commissions regarding UNE-P, should be resolved by the Commission independently from the Commission's resolution of the linesharing issue. In other words, Covad suggested that broadband competition and local voice competition are both important issues, and that a pro-competitive, pro-state role resolution of the UNE-P issue need not be reached at the expense of broadband competition.

In its presentation, Covad reiterated the significant consumer benefits stemming from competitor access to the line sharing UNE, both in lowering broadband prices and in promoting broadband investment. Covad reviewed the uncontroverted record in the above-referenced dockets -- from AT&T to NARUC to Earthlink to the Small Business Administration -- that supports the preservation of last mile unbundling in general, and

linesharing unbundling in specific. In particular, Covad reminded Commission Martin that widespread broadband deployment has been and will continue to be promoted by the FCC's linesharing rules, and the history of DSL proves without question that broadband competition sparked by linesharing has expanded DSL deployment by all carriers. Covad further highlighted the fact that Bell companies' arguments regarding "investment incentives" do not apply to linesharing, which uses existing, unused copper facilities and provides the Bells substantial revenue over such facilities. As such, Commissioner Martin's support for deregulation of new fiber investment – as outlined in his prior public statements, including his PLI speech in December 2002 – need not include a call for linesharing elimination in order to accomplish that stated goal. Finally, Covad noted that Commissioner Martin's concerns regarding the pricing of the linesharing UNE merited full exploration by the Commission in the context of the upcoming TELRIC pricing proceeding announced by the Wireline Competition Bureau in January 2003. Covad expressed its belief that resolving outstanding pricing concerns in that pricing docket is a more rational and defensible policy outcome than eliminating the line sharing UNE altogether on the basis of pricing concerns.

Covad also discussed additional important grounds for the preservation of the line sharing UNE. Specifically, Covad discussed the prospects for greater market concentration among providers of broadband services – such as speculation surrounding SBC/DirecTV -- in the months and years ahead, and the impact that elimination of competitive line shared xDSL services would have on such concentration. Apart from its immediate market-concentrating effects of severely curtailing and in many instances eliminating broadband competition to the detriment of consumers nationwide, eliminating the line sharing UNE would tie the Commission's hands going forward in evaluating future merger transactions involving multiple providers of broadband services. Covad also explained the enormous legal risks facing any FCC order that would eliminate the facilities-based competition made possible by the line sharing UNE. Due to the significant exogenous investments required for facilities-based line sharing services, the obvious impairment of competitors without access to loop UNEs such as line sharing, and the lack of record support for the elimination of line sharing, Covad expressed its strong belief that any FCC order eliminating the line sharing UNE would be highly vulnerable on appeal.

No additional materials were distributed during the meeting.

Respectfully submitted,

/s/ Praveen Goyal

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